

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DERRICK ESTELL,

Defendants.

Case No.: 2:13-cr-00185-KJD-VCF

**ORDER**

**Motion to Re-Open Detention  
Hearing - #66**

This matter is before the Court on Defendant's Motion to Re-Open Detention Hearing (#66), filed on April 30, 2014. The Government filed its Response to Defendant's Motion (#68) on May 7, 2014.

**BACKGROUND AND DISCUSSION**

Defendant Derrick Estell is currently charged in the Second Superseding Indictment (#51) with conspiracy to interfere with commerce by robbery in violation of 18 U.S.C. § 1951, interference with commerce by robbery in violation of 18 U.S.C. § 1951, and brandishing a firearm during a crime of violence in violation of 18 U.S.C. § 924(c)(1)(A)(ii). Defendant Estell initially appeared in court and was arraigned on the Superseding Indictment (#24) on October 17, 2013. *See Minutes of Proceedings* (#27). The Government moved to detain Defendant Estell pending trial as both a substantial risk of nonappearance and danger to the community. The Government's motion to detain was based on the charges against the Defendant which involved his alleged participation in armed robberies and his conspiring with the co-defendant to commit those and other robberies. The Government also based its motion on Defendant's extensive prior criminal history which included a 1995 felony conviction for attempted burglary, a 2010 felony conviction

1 for arson, misdemeanor convictions, parole and probation violations, failures to appear, and  
2 outstanding misdemeanor warrants.

3 Based on the advice of counsel, Defendant did not interview with pretrial services. The  
4 Defendant, through counsel, did not argue the issue of detention during the hearing on October 17,  
5 2013, but instead submitted to detention. The Court was not provided with information regarding  
6 Defendant's residential history or family ties in this or any other community. The Court was also  
7 not provided with information regarding the Defendant's physical or mental health or whether he  
8 uses illegal controlled substances, or abuses alcohol. Defendant's criminal history record, however,  
9 showed prior misdemeanor arrests and convictions for possession of controlled substances, and  
10 driving under the influence of alcohol. Based on the foregoing, the Court ordered that Defendant  
11 Estell be detained pending trial as a both a substantial risk of nonappearance and danger to the  
12 community. *Order of Detention* (#37).

13 Defendant now moves the Court to re-open the issue of detention on the grounds that he  
14 does have substantial residential and family ties in Clark County, Nevada and that he has a prior  
15 history of gainful employment through the Laborer's Union. Defendant also states that he has  
16 undergone substance abuse counseling or treatment while in custody and will abide by conditions  
17 of pretrial supervision if released pending trial.

18 18 U.S.C. § 3142(f)(2)(B) states that the detention hearing "may be reopened, before or  
19 after a determination by the judicial officer, at any time before trial if the judicial officer finds that  
20 information exists that was not known to the movant at the time of the hearing and that has a  
21 material bearing on the issue whether there are conditions of release that will reasonably assure the  
22 appearance of such person as required and the safety of any other person and the community."  
23 Courts have interpreted this provision strictly, holding that a detention hearing should not be  
24 reopened if the information was available at the time of the initial hearing. *United States v. Ward*,  
25 63 F.Supp.2d 1203, 1206-07 (C.D.Cal. 1999); *United States v. Dillon*, 938 F.2d 1412, 1415 (1st  
26 Cir. 1991); and *United States v. Hare*, 873 F.2d 796 (5th Cir. 1989). *See also United States v.*  
27 *Wittenmyer*, 2001 WL 96840, \*3 (D.Kan. 2001).

28 ...

1 Here, with the possible exception of information relating to substance abuse counseling or  
2 treatment while in custody, Defendant Estell has not submitted any new information that was not  
3 known or available to him prior to or at the time of the detention hearing on October 17, 2013.  
4 Defendant, on the advice of counsel, chose not to interview with Pretrial Services or to argue the  
5 issue of detention at the hearing. He has failed to make the requisite showing of new information,  
6 not previously available to him, which would justify reopening the issue of detention. Furthermore,  
7 the additional information that Defendant offers in support of his motion would not justify a  
8 decision to grant pretrial release in view of the charges against Defendant which involve alleged  
9 crimes of violence, and in view of his prior criminal record, which also supports both a finding that  
10 he is a substantial risk of nonappearance and a danger to the community. Accordingly,

11 **IT IS HEREBY ORDERED** that Defendant's Motion to Re-Open Detention Hearing  
12 (#66) is **denied**.

13 DATED this 12th day of May, 2014.

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16 GEORGE FOLEY, JR.  
17 United States Magistrate Judge  
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